



## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

April 5, 2000

### **H.R. 1658** **Civil Asset Forfeiture Reform Act of 2000**

*As passed by the Senate on March 27, 2000*

#### **SUMMARY**

H.R. 1658 would make many changes to federal asset forfeiture laws that would affect the processing of about 60,000 civil seizures conducted each year by the Department of Justice (DOJ) and the Department of the Treasury. (The Treasury Department makes an additional 50,000 seizures annually that would not be affected by this act.) Assuming appropriation of the necessary amounts, CBO estimates that implementing H.R. 1658 would cost \$9 million over the 2001-2005 period to pay for additional costs of court-appointed counsel that would be authorized by this legislation. In addition, enacting the legislation would affect direct spending and receipts; therefore, pay-as-you-go procedures would apply.

Because CBO expects that enacting H.R. 1658 would result in fewer civil seizures by DOJ and the Treasury Department, we estimate that governmental receipts (i.e., revenues) deposited into the Assets Forfeiture Fund and the Treasury Forfeiture Fund would decrease by about \$115 million each year beginning in fiscal year 2001. Under current law, both forfeiture funds are authorized to collect revenue and spend the balance without further appropriation. Thus, the corresponding direct spending from the two funds would also decline, but with some lag. CBO estimates that enacting this provision would decrease projected surpluses by a total of \$46 million over the fiscal years 2001 and 2002 (the difference between lower revenues and lower direct spending over those years), but that by fiscal year 2003 the changes in receipts and spending would be equal, resulting in no net budgetary impact thereafter.

H.R. 1658 also would require the Legal Services Corporation (LSC) to represent certain claimants in civil forfeiture cases and would require the federal government to reimburse the LSC for its costs. CBO estimates that this provision would increase direct spending by \$5 million over the 2001-2005 period.

In addition, H.R. 1658 would make the federal government liable for any property damage, attorney fees, and pre-judgment and post-judgment interest payments on certain assets to prevailing parties in civil forfeiture proceedings. CBO cannot estimate either the likelihood or the magnitude of such awards because there is no basis for predicting either the outcome of possible litigation or the amount of compensation.

H.R. 1658 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA), but CBO expects that enacting this legislation would lead to a reduction in payments to state and local governments from the Assets Forfeiture Fund and the Treasury Forfeiture Fund.

## **DESCRIPTION OF THE ACT'S MAJOR PROVISIONS**

H.R. 1658 would make various changes to federal laws relating to the forfeiture of civil assets. In particular, the act would:

- Establish a short statutory time limit for the federal government to notify interested parties of a seizure and to file a complaint;
- Eliminate the cost bond requirement, whereby claimants have to post bond in an amount of the lesser of \$5,000 or 10 percent of the value of the seized property (but not less than \$250) to preserve the right to contest a forfeiture;
- Permit federal courts to appoint counsel for certain indigent claimants;
- Increase the federal government's burden of proof to a preponderance of the evidence;
- Require the federal government to compensate prevailing claimants for property damage;
- Establish the federal government's liability for payment of attorney fees and pre-judgment and post-judgment interest; and
- Authorize the use of forfeited funds to pay restitution to crime victims.

## **ESTIMATED COST TO THE FEDERAL GOVERNMENT**

As shown in the following table, CBO estimates that implementing H.R. 1658 would increase discretionary spending for court-appointed counsel by \$9 million over the

2001-2005 period, assuming appropriation of the necessary funds. (For the purposes of this estimate, CBO assumes that spending for this purpose would be funded with appropriated amounts from the Defender Services account.) In addition, we estimate that over the 2001-2005 period, the reductions in direct spending of funds from forfeited assets would be smaller than the reductions in revenues estimated to occur as a result of enacting H.R. 1658, resulting in a net cost of \$46 over the five-year period. Finally, CBO estimates that additional payments to the Legal Services Corporation would be about \$1 million each year. The costs of this legislation fall within budget function 750 (administration of justice).

	By Fiscal Year, in Millions of Dollars					
	2000	2001	2002	2003	2004	2005
<b>SPENDING SUBJECT TO APPROPRIATION</b>						
Spending Under Current Law						
Defender Services						
Estimated Authorization Level <sup>a</sup>	375	387	397	408	419	429
Estimated Outlays	373	389	398	408	419	429
Proposed Changes						
Estimated Authorization Level	0	1	2	2	2	2
Estimated Outlays	0	1	2	2	2	2
Spending Under H.R. 1658 for						
Defender Services						
Estimated Authorization Level <sup>a</sup>	375	388	399	410	421	431
Estimated Outlays	373	390	399	410	421	431
<b>CHANGES IN REVENUES AND DIRECT SPENDING</b>						
Changes in Forfeiture Receipts						
Estimated Revenues	0	-115	-115	-115	-115	-115
Spending of Forfeiture Receipts						
Estimated Budget Authority	0	-115	-115	-115	-115	-115
Estimated Outlays	0	-76	-108	-115	-115	-115
Payments to the Legal Services Corporation						
Estimated Budget Authority	0	1	1	1	1	1
Estimated Outlays	0	1	1	1	1	1

a. The 2000 level is the amount appropriated for that year. The estimated authorization levels for 2001 through 2005 reflect CBO baseline estimates, assuming adjustments for anticipated inflation.

## **BASIS OF ESTIMATE**

For purposes of this estimate, CBO assumes that H.R. 1658 will be enacted by the end of fiscal year 2000 and that the necessary amounts will be appropriated for each fiscal year. We also assume that outlays for defender services and the use of forfeiture receipts will continue to follow historical patterns.

### **Spending Subject to Appropriation**

H.R. 1658 would allow for court-appointed counsel for certain parties contesting a forfeiture who already have been appointed counsel in a related criminal case. The act also would eliminate the requirement that claimants post bond before the case is tried in federal court. Consequently, CBO anticipates that enacting H.R. 1658 would make it easier for people whose assets have been seized to challenge the forfeiture of such assets. Based on information from DOJ, we estimate that the percentage of seizures that would result in contested civil cases would increase from 5 percent annually to at least 20 percent in fiscal year 2001. As the defense bar becomes increasingly aware of and more familiar with the provisions of H.R. 1658, CBO expects that the percentage of contested civil cases would increase to about 30 percent each year.

While the decision to appoint counsel would be at the discretion of the judge assigned to each case, CBO expects that judges would not want to encourage litigation in many cases. Moreover, CBO expects that many of the contested cases would involve larger assets, and such cases usually do not involve indigent claimants who would need court-appointed counsel. Based on information from DOJ, CBO estimates that a small number of indigent claimants in civil forfeiture cases would also have a criminal case pending. Specifically, we estimate that court-appointed counsel would be provided in about 5 percent of contested civil cases. In addition, because forfeiture cases involve property, the courts might have to appoint more than one attorney to represent multiple claimants in the same case. Historical data suggest an average of 1.5 claims per case.

While H.R. 1658 does not specify a level of compensation paid to court-appointed counsel for a civil forfeiture case, CBO expects such payment would be equivalent to amounts paid in criminal cases. Based on information from the Administrative Office of the United States Courts, CBO estimates that court-appointed counsel would be paid about \$3,000 per claimant per case. In total, we estimate that additional defender services related to civil asset forfeiture proceedings would cost about \$9 million over the next five years.

In addition, other discretionary spending could be affected by this act. On the one hand, the federal court system could require additional resources in the future if additional cases are

brought to trial and the amount of time spent on each case increases. On the other hand, some savings in law enforcement resources could be realized if fewer seizures are conducted each year. While CBO cannot predict the amount of any such costs or savings, we expect that, on balance, implementing the act would result in no significant additional discretionary spending other than the increases for court-appointed counsel.

## **Revenues and Direct Spending**

Based on information from DOJ and the Treasury Department, CBO estimates that about 23,000 seizures that would otherwise occur each year under current law would be eliminated under H.R. 1658. (Such seizures primarily involve assets whose value is less than \$25,000.) The various changes to civil forfeiture laws under this act would make proving cases more difficult and more time-consuming for the federal government. In many instances, law enforcement agencies, including the state and local agencies that work on investigations jointly with the federal government and then receive a portion of the receipts generated from the forfeitures, may determine that certain cases, especially those with a value less than \$25,000, may no longer be cost-effective to pursue. While the federal government and other law enforcement agencies would take a few years following enactment of the legislation to realize the full effects of its provisions on the forfeiture and claims process, CBO expects that the total number of seizures would decrease by nearly 40 percent. CBO estimates that such a reduction in seizures would reduce total forfeiture receipts by about \$115 million in fiscal year 2001 and by \$575 million over the 2001-2005 period.

The receipts deposited into the Assets Forfeiture Fund and the Treasury Forfeiture Fund are used to pay for all costs associated with the operation of the forfeiture program, the payment of equitable shares of proceeds to foreign, state, and local law enforcement agencies, and other expenses not directly associated with a forfeiture case, such as payment of awards to informants. In recent years about 67 percent of total asset forfeiture receipts collected in a given year are spent in the same year in which they are collected; therefore, we estimate that enacting H.R. 1658 would result in a decrease in federal spending of \$76 million in fiscal year 2001, \$108 million in 2001, and \$115 million annually in subsequent years.

In addition, H.R. 1658 would require the Legal Service Corporation to represent claimants in financial need and whose claim involves an asset that is the claimant's primary residence. Under H.R. 1658, the court must enter a judgment in favor of the LSC for the cost of legal representation. Based on historical data, CBO estimates that such judgments would increase direct spending by about \$1 million a year.

## Additional Potential Budgetary Impacts

In addition, this act would make the federal government liable for any property damage, attorney fees, and pre-judgment and post-judgment interest payments on certain assets to prevailing parties in civil forfeiture proceedings. However, CBO cannot estimate either the likelihood or the magnitude of such awards because there is no basis for predicting either the outcome of possible litigation or the amount of compensation. Compensation payments could come from appropriated funds or occur without further appropriation from the Judgment Fund, or from both sources.

## PAY-AS-YOU-GO CONSIDERATIONS

The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The following table summarizes the estimated pay-as-you-go effects of H.R. 1658. For the purposes of enforcing pay-as-you-go procedures, only the effects in the current year, the budget year, and the succeeding four years are counted.

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	By Fiscal Year, in Millions of Dollars										
	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Changes in outlays	0	-75	-107	-114	-114	-114	-114	-114	-114	-114	-114
Changes in receipts	0	-115	-115	-115	-115	-115	-115	-115	-115	-115	-115

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## ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

H.R. 1658 contains no intergovernmental mandates as defined in UMRA. However, because CBO expects that the seizure of assets would decline under the act, CBO estimates that payments to state and local law enforcement agencies from the Assets Forfeiture Fund and the Treasury Forfeiture Fund would decline by about \$230 million over the 2001-2005 period. State and local law enforcement agencies receive, on average, about 40 percent of the receipts in these forfeiture funds either because they participate in joint investigations that result in the seizure of assets, or because they turn over assets seized in their own investigations to the federal government, which conducts the civil asset forfeiture case. In both cases the receipts from a seizure are accumulated in the funds and a portion is distributed to state and local agencies according to their involvement.

## **ESTIMATED IMPACT ON THE PRIVATE SECTOR**

This act would impose no new private-sector mandates as defined in UMRA.

### **PREVIOUS CBO ESTIMATE**

On June 23, 1999, CBO transmitted a cost estimate for H.R. 1658 as reported by the House Committee on the Judiciary on June 18, 1999. While the two versions of the legislation are similar, we estimate they would have different costs. CBO estimates the House version would result in a greater loss of forfeiture receipts, by \$25 million annually, than the version approved by the Senate Committee on the Judiciary because the House version would place the burden of proof in assets forfeiture cases more heavily on the federal government.

In addition, the House version of H.R. 1658 would not require payments to the Legal Services Corporation for representation of certain claimants whose principal residence has been seized. Finally, CBO estimates that the Senate version of the legislation would authorize less spending than the House version for the legal representation of indigent claimants because it restricts the eligibility requirements for this service more than the House legislation. We estimate this representation would cost about \$2 million annually under the Senate version and about \$13 million annually under the House version.

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